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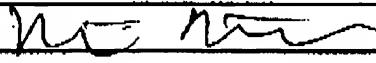
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Total Number of Pages in This Submission 4

Application Number	10685256
Filing Date	09/20/2003
First Named Inventor	KURUP, SHREE
Art Unit	3711
Examiner Name	MS. LEGESSE
Attorney Docket Number	KURUP-3

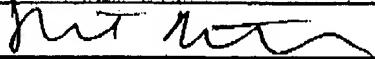
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<input type="checkbox"/> Remarks APPLICANT HAS ALREADY FILED AN RCE; THE APPLICATION IS NEARLY 5 YEARS OLD.		

## SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	ROBERT NATHANS		
Signature			
Printed name	ROBERT NATHANS		
Date	08-09-2008	Reg. No.	19558

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## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Shree Kurup  
Application no. 10/665,256  
Filed 09/20/2003

Group art unit: 3711  
Examiner: Nini Legesse

NOVELTY FRAMELESS EYE WEAR  
FOR PROMOTING SOCIABILITY

REQUEST FOR RECONSIDERATION OF THE FINAL  
REJECTION OF 06-24-2008

Applicant respectfully requests reconsideration of the final rejection in order to avoid the necessity of filing an appeal. The application will be five years old next month.

All independent claims specify the underlined phrases:

41. (new) "A method for aiding a person seeking to attract attention at socially interactive events who may be self-conscious about wearing conventional eyeglasses comprising the steps of:

(a) providing a person seeking to attract attention at said socially interactive events with a flexible frameless eye patch having an attention getting device thereon and having an aperture therein sufficient to enable said person to see through the aperture, and with a first adhesive layer on a first side of said flexible frameless eye patch for affixing said flexible frameless eye patch directly upon said person's face to maintain said eye patch in place during vigorous social activity and having a second adhesive layer upon a second side of said flexible frameless eye patch adjacent said aperture for supporting an optical element upon said flexible frameless eye patch; and..."

Neither Chunga nor Mack can properly be said to disclose the invention as recited above, as the examiner asserts, since the above underlined phrases particularly point out applicant's objective or new function and its solution, not suggested by the references. These references teach away from the underlined claim language because the eyeglasses of both references would tend to fall off during dancing and swimming and thus would be

ignored and not be useful by the worker in the art dealing with applicant's recited objective. None suggest flexible frameless eye patches, not eyeglasses, for affixing the lens directly upon the person's face to keep the patch in place during vigorous social activity also as specified by the claim underlining above. Additionally, people self-conscious about wearing conventional eyeglasses, would not consider eyeglasses of the references, and thus they teach away from applicant's stated objective for this reason also, and would be ignored by the worker in the art.

The examiner states that swimming and dancing are not recited in the claims. They need not be, as all independent claims specify vigorous social activity which would be read in the light of the specification to include dancing and swimming. Applicant already filed an RCE following the examiner's suggestion long ago of emphasizing the method approach; the application will be five years old this month. Any claim amending suggestions resulting in allowance would be welcome.

Also, there is no reasonable expectation of success required by MPEP 2143 in making the combination proposed by the examiner to achieve applicant's clearly stated objective of inviting social interaction by securing the messages upon eye patches during vigorous activity by virtue of using applicant's claimed lens bearing eye patch rather than eyeglasses. The Mack and Chunga eyeglasses would often fall off during vigorous activity; thus there is no expectation of success. Imagine a person swimming in the ocean with a pair of eyeglasses as shown by Mack or Chinga! Also there can be no expectation of success in making this combination as there is no room on Chenga for receiving a message and thus Chunga teaches away from the combination.

(a) "It is the invention as a whole that must be considered in obviousness determinations. The invention as a whole embraces the structure, its properties and the problem it solves. In re Wright 6 USPQ 2<sup>nd</sup> 1959 (Fed. Cir. 1988).

Applicant respectfully submits that a rejection under 35USC 103 cannot be proper when the examiner is combining two references that teach away from applicant's invention.